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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,260	09/30/2003	Koichiro Mitsui	4635-003	2073
22429 7590 06/11/2007 LOWE HAUPTMAN BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 06/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/673,260

Applicant(s)

MITSUI ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

Applicant's arguments, see Pre-Appeal Conference Request, filed January 11, 2007, with respect to the rejection(s) of claim(s) 1-3, 8, 9-13 and 16-19 under 35 U.S.C. 102 and claims 4-7, 14, 15 and 20 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art references.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-14 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fries et al (CA 2143791) in view of Kuen et al (U.S. Patent Application Publication No. 2002/0138062).

With respect to **claim 1**: Fries teaches a disposable diaper 10, comprising:
a diaper main body including a top sheet 28, a back sheet 30 and an absorbent body 32 disposed between said top sheet 28 and backsheet 30; a pair of side flaps 56,58 respectively extending outwardly from respective side edge portions, an end portion in a lateral direction of

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said diaper main body, the side flaps 56,58 with connector members 40 being disposed between said top sheet 28 and back sheet 30, each of said side flaps 56,58 comprising an elastic sheet sandwiched between upper and lower non-woven fabric layers (Page 5, lines 16-27, Page 31, line 32 – Page 32, line 3, page 34, lines 14-24); and a fixing tape 36 having a hook member and being disposed in proximity of an outermost lateral edge of each of the side flaps 56,58 extending outwardly.

Fries does not explicitly teach an engaging region provided on each said side flap that meets the relevant limitation of claim 1. Kuen teaches an absorbent article having an engaging region provided on each of two side flaps to engage the respective fixing tape with said side flap through a hook member, said engaging region including portions in the form of complementary fasteners having an engaging force with said hook member that is different from an engaging force in other portions of said engaging region. Kuen teaches that this configuration aids in preventing the unintentional engagement of the hook fasteners with articles of clothing, thus causing distortion of the fastening element, therefore it would be obvious to one of ordinary skill in the art to modify the article of Fries so as to have an engaging region provided on each side flap to engage the respective fixing tape as taught by Kuen to prevent unintentional engagement of the fixing tape portions with articles of clothing and the resulting distortion of said fixing tape.

With respect to **claim 2**: The engaging region of the combined teaching of Fries and Kuen comprises an engaging portion engageable with said hook member, and a non-engaging portion (i.e. the portion of chassis web 88 taught by Kuen that does not contain complementary fastening elements) with which said hook member can barely be engaged or cannot be engaged at all.

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The motivation to combine the articles of Fries and Kuen is stated *supra* with respect to claim 1.

With respect to **claim 3**: The fixing tape of the combined teaching of Fries and Kuen comprises a fixing tape substrate and said hook member provided on a surface of said fixing tape substrate ('791, Page 32, lines 13-15); and

said fixing tape substrate is provided with a gripping portion at an end thereof and an attaching portion at the opposite end thereof, said attaching portion being attached to the respective side flap 56, 58. ('791, Fig. 1, Page 32, lines 18-21)

With respect to **claim 4**: Since both the combined teaching of Fries and Kuen teach hook and loop fasteners that engage each other, the engaging force of said engaging region taught by the combined teaching of Fries and Kuen with said hook member is inherently in a range of 0.3 N/25mm to 2.2 N/25mm. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, an engaging region to engage a fixing tape having a hook member) except for a property or function (in the present case, an engaging force of said engaging region) and the examiner can not determine whether or not the reference (s) inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

With respect to **claim 5**: Since both the combined teaching of Fries and Kuen teach hook and

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loop fasteners that engage each other, the engaging force of said engaging region taught by the combined teaching of Fries and Kuen with said hook member is inherently within the range of not greater than 2.2 N/25mm. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, an engaging region to engage a fixing tape having a hook member) except for a property or function (in the present case, an engaging force of said engaging region) and the examiner can not determine whether or not the reference (s) inherently possesses properties that render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

With respect to **claim 6**: The non-engaging portion of the combine detaching of Fries and Kuen comprises a nonwoven fabric having a low engaging force with said hook member. ('062, ¶0065) The surface of the chassis web 88 that said engaging region is located on is considered herein to be the bodyside liner 42 taught by Kuen.

With respect to **claim 7**: Because the combined teaching of Fries and Kuen teaches a fixing tape having a hook fastening member that engages a complementary engaging region, the range of the entire area of the engaging region will necessarily be between 0-100% of the area of the hook member to ensure engagement. Such range overlaps the range set forth in claim 7, thus the combined teaching of Fries and Kuen renders claim 7 unpatentable.

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With respect to **claim 8**: The hook member of said fixing tape of the combined teaching of Fries and Kuen is by its nature a male engaging piece of a hook-and-loop fastener.

With respect to **claim 9**: The fixing tape of the combined teaching of Fries and Kuen is attached to a surface of said side flap (e.g. flaps 56,58 of Fries) and can be folded back along the outermost lateral edge of said side flap, as taught by Kuen in Figs. 10 and 11, in such a manner that said hook member faces said surface of said side flap, so as to be temporarily fixed to said surface of said side flap in a manner where said hook member achieves engagement with said engaging region when said fixing tape is folded back. ('062, Figs. 10,11)

With respect to **claim 10**: The fixing tape of the combined teaching of Fries and Kuen is attached to said side flap in such a manner that said hook member opposes a surface of said side flap so that said fixing tape is temporarily fixed to said surface of said side flap (namely the surface of a chassis web e.g. web 88 taught by Kuen) in a manner where said hook member achieves engagement with said engaging region. ('062, Figs. 10,11)

With respect to **claim 11**: The fixing tape of the combined teaching of Fries and Kuen is attached to one of opposite surfaces of said side flap and is foldable along the outermost lateral edge of said side flap in such a manner that said hook member faces the other one of said opposite surfaces of the side flap, so as to be temporarily fixed to said other surface of said side flap in a manner where said hook member achieves engagement with said in said engaging region after said fixing tape is folded back. ('062, Figs. 10,11)

With respect to **claim 12**: The said engaging region of the combined teaching of Fries and Kuen

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comprises an engaging portion engageable with said hook member, and a non-engaging portion (i.e. the remainder of the inner surface of said side flaps, e.g. the portion of chassis web 88 taught by Kuen that does not contain complementary fasteners) with which said hook member can barely be engaged or cannot be engaged at all; and said non-engaging portion of said engaging region is formed on at least one of said fixing tape (Fries teaches an intermediate non-engaging region) and said surface of said side flap (as taught by Kuen).

With respect to **claim 13**: The engaging portion of the combined teaching of Fries and Kuen in said engaging region is formed on said surface of said side flap. ('062, Figs. 10,11)

With respect to **claim 14**: The fixing tape (e.g. tape 36 taught by Fries) comprises a fixing tape substrate and said hook member provided on a surface of said fixing tape substrate ('791, Page 32, lines 13-15); and said fixing tape substrate comprises a nonwoven fabric inherently having a low engaging force with said hook member, since the substrate material and hook members taught by the combined teaching of Fries and Kuen is substantially identical to the claimed substrate and hook member. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, a fixing tape substrate and a hook member) except for a property or function (in the present case, a low engaging force of the substrate with respect to the hook member) and the examiner can not determine whether or not the reference (s) inherently possesses properties that render obvious the claimed invention but has a basis for

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shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

With respect to **claim 16**: The side flaps of the combined teaching of Fries and Kuen comprise a composite sheet including an elastic sheet and a nonwoven fabric at least on a side adapted to face a wearer's body in use. ('791, Page 31, line 32 – Page 32, line 3)

With respect to **claim 17**: Fries teaches a disposable diaper 10 comprising a fixing tape 36 provided with a hook member. ('791, Fig. 2) Fries does not teach an engaging region with which said hook member of said fixing tape is to be engaged that includes therein a non-engaging portion where said hook member is substantially unable to be engaged, or that said non-engaging portion comprises a temporary fixing portion of said fixing tape.

Kuen teaches an absorbent article having an engaging region provided on each of two side flaps to engage the respective fixing tape with said side flap through a hook member, said engaging region including portions in the form of complementary fasteners having an engaging force with said hook member that is different from an engaging force in other portions of said engaging region. Kuen teaches that this configuration aids in preventing the unintentional engagement of the hook fasteners with articles of clothing, thus causing distortion of the fastening element, therefore it would be obvious to one of ordinary skill in the art to modify the article of Fries so as to have an engaging region provided on each side flap to engage the respective fixing tape as taught by Kuen to prevent unintentional engagement of the fixing tape portions with articles of clothing and the resulting distortion of said fixing tape. Kuen also

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teaches a non-engaging portion (i.e. the portion of chassis web 88 forming the inner surface of the flaps taught by Kuen that does not contain complementary fastening elements) with which said hook member can barely be engaged or cannot be engaged at all.

With respect to **claim 18**: Fries teaches a disposable diaper 10, comprising:

a diaper main body including a top sheet 28, a back sheet 30 and an absorbent body 32 disposed between said top sheet 28 and backsheet 30, said diaper main body 10 further comprising first and second waist regions 14,12, respectively, and a crotch region 16 extending in a longitudinal direction of said diaper main body between said first and second waist regions (Page 5, lines 6-8, 16-27); a pair of side flaps 56,58 respectively extending outwardly from transversely opposite sides of the first waist region 14 of said diaper main body in a transverse direction of said diaper main body 10;

a pair of fixing tabs 36 each being attached to one of said side flaps 56,58 in a vicinity of an outermost lateral edge of said side flap 56/58, each said fixing tape 36 being provided with a hook member comprising hooks which are engageable, in use, with the second waist region 12 of said diaper main body to define a waist hole and a pair of leg holes (Fig 1).

Kuen teaches an absorbent article having an engaging region provided on each of two side flaps to engage the respective fixing tape with said side flap through a hook member, said engaging region including portions in the form of complementary fasteners having an engaging force with said hook member that is different from an engaging force in other portions of said engaging region. Kuen teaches that this configuration aids in preventing the unintentional engagement of the hook fasteners with articles of clothing, thus causing distortion of the fastening element, therefore it would be obvious to one of ordinary skill in the art to modify the article of Fries so as to have an engaging region provided on each side flap to engage the

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respective fixing tape as taught by Kuen to prevent unintentional engagement of the fixing tape portions with articles of clothing and the resulting distortion of said fixing tape. Kuen also teaches a non-engaging portion (i.e. the portion of chassis web 88 forming the inner surface of the flaps taught by Kuen that does not contain complementary fastening elements) with which said hook member can barely be engaged or cannot be engaged at all. When said fixing tape is temporarily fixed to said side flap before use, the engaging region taught by Kuen has a first engaging force with said hook member. When said fixing tape is temporarily fixed to said side flap before use, said non-engaging region has a second engaging force with said hook member, the second engaging force necessarily being less than the first engaging force, since the hook member is not able to engage the non-engaging region at all, or barely. When said fixing tape is temporarily fixed to said side flap before use, said engaging portion is in direct contact and engaged with some, but not all, of the hooks of the respective hook member, since some hooks of the combined teaching of Fries and Kuen may overlap the non-engaging region.

With respect to claim 19: As seen in Figs 10 and 11 of Kuen, when said fixing tape is temporarily fixed to said side flap before use, said non-engaging portion (defined by portions of web 88 that surround engaging region 84b) is in direct contact with other hooks (e.g. 82a in Figs. 10,11) of the respective hook member.

Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fries et al (CA 2143791) in view of Kuen et al (U.S. Patent Application Publication No. 2002/0138062) as applied to claims 1-14 and 16-19 above, and further in view of Tanzer et al (U.S. Patent No. 6,730,069).

With respect to **claim 15**: The fixing tape of the combined teaching of Fries and Kuen comprises a fixing tape substrate and said hook member provided on a surface of said fixing tape substrate ('791, Page 32, lines 13-15); and said fixing tape substrate is provided with a gripping portion at an end thereof and an attaching portion at the opposite end thereof, said attaching portion being attached to the respective side flap 56, 58. ('791, Fig. 1, Page 32, lines 18-21)

The combined teaching of Fries and Kuen does not teach that said fixing tape is provided with an opening in said attaching portion. Tanzer teaches a fastener comprising a first flexible layer 72 comprised of a stretchable laminate of nonwoven material and a second flexible layer 78 attached to the first flexible layer. The first flexible layer contains islands of fastener material and the second flexible layer contains openings 80 corresponding to the location and size of each island located in an area of said fastener that is considered herein to be an attaching region. Tanzer teaches that the openings allow for exposure of the fastener island 64, therefore it would be obvious to one of ordinary skill in the art to modify the tab fastener of the combined teaching of Fries and Kuen so as to contain openings in an attaching region as taught by Tanzer. ('069, Col. 9, line 67, Col. 10, lines 1,2, Col. 12, lines 57-65). The combined teaching of Fries and Kuen and Tanzer thus teaches a portion of said surface of said side flap being exposed through said opening and engageable with said hook member when said fixing tape is folded back.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

May 29, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', is written over the printed name and title.